Case: 1:85-cv-01609 Doc #: 10 Filed: 11/15/85 Page: 1 of 46 PAGEID #: 3

U.S. Department of Justice

PROCESS RE FIPT AND RETURN See Instructions for "Service of Process by the U.S. Mar

United States Marshals Service	on the reverse	of this form.	e U.S. Marshal
PLAINTIFF		Market Market State of the Stat	
		COURT CASE NUMBI	ER
NEXXUS PRODUCTS COMPANY, INC.		C1-85-1609	
DRUG EMPORIUM, INC. AND DOES I THROUGH XX	TYPE OF PROCESS		
	Seizure		
SERVE NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO DRUG EMPORIUM	O SERVE OR DE	ESCRIPTION OF PROPERTY	TO SEIZE OR CONDEMN
ADDRESS (Street or RFD; Apartment No., City, State and ZIP Co.	de)		
485 East Kemper Road			
AT Cincinnati, Ohio			
END NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELO	ow:	Number of process to be	
Thomas L. Katuz, Esq.	i s	served with this Form - 285	
Wood, Herron & Evans 2700 Carew Tower	1	Number of parties to be	
Cincinnati OH 45202		served in this case	8
CINCINIACI ON 45202	i,	Check for service	
		on U.S.A.	
		wice /r I t p	411 411
SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EX Telephone Numbers, and Estimated Times Available For Service):	PEDITING SER	VICE Include Business and A	Alternate Addresses, All
old .			Fold
to the Plaintiff's trade name and tradema "THERAPPE", "ASSURE", "HUMECTRESS", "NATU SCIENCE", "KERAPHIX" and "BOTANOIL".	rks inc	luding "NEXxUS" EARTH UNITED WI	TH
	AINTIPP T	ELEPHONE NUMBER	DATE
	CESTATATA	241-2324	DAIL
SPACE BELOW FOR USE OF U.S. MARSHAL ONL	Y - DO NO	OT WRITE BELOW	THIS LINE
	The second secon	ed USMS Deputy or Clerk	Date
number of process indicated. Sign only first USM 285 if more han one USM 285 is submitted) No. No.		Ju	10-7-85
hereby certify and return that I have personally served, have legal evidence described on the individual, company, corporation, etc., at the address shown above on serted below.	e of service. or on the individu	have executed as shown in ual, company, corporation, etc	'Remarks'', the process
	poration ato n	amod shove (Cas sawarks hale	and a
I hereby certify and return that I am unable to locate the individual, company, cor	poration, etc., ii	amed above (See Femuras Deit	(W)
	ge 4815	cretion	n of suitable age and dis- then residing in the de- s usual place of abode.
Address (complete only if different than shown above)	enal	Date of Service	Time 10:00 pm
+ · · · · · · · · · · · · · · · · · · ·	ion #	10-9-85 Signature of U.S.	Marshal or Deputy
liss!		- Vita	Lent
DEQUTY FAS		Amount owed to U.S. Marshal or	Amount of Refund
3.00 (including endeavors) 12.00 21.60 N/S	keted KS	2	
EMARKS: ITEMS SEIZED WERE.	-10	1 em	
FOUR BOTTLES OF NEXXUS KER	PAPH ANHO	HARAIGAS ON CTS	-250Hz.
FOUR BOTTLES OF NEXXUS KER FIVE PAGGS OF INFO ON NEXXUS.	1-c58.ºNo	GEZ SI NON	0/2485-10
DEPUTY U.S. MARSHAL FEE = 3.00 PER 4 HOURS X 3.00 = 12.	HOUR	CLERK	,
4 Hours x 3.00 = 1/2.	00	KENNETH J. M	10

Case: 1:85-cv-01609 Doc #: 10 Filed: 11/15/85 Page: 2 of 46 PAGEID #: 4

INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL

Please type or print legibly, insuring readability of all copies. DO NOT DETACH ANY COPIES.

Submit one complete set of this form (USM-285) and one copy of each writ for each individual, company, corporation, etc., to be served or property to be seized or condemned. The applicable fees for such service(s) (T28, USC Sec. 1921 establishes the fees for service of process by the U.S. Marshal) may be required prior to said service.

For service of any process upon an officer or agent of the United States Government, submit a copy of the writ and a set of Form USM-285 for each officer or agent upon whom service is desired. Submit three (3) additional copies of the writs for service upon the Government of the United States. The U.S. Marshal will serve one (1) upon the U.S. Attorney and will forward two (2) to the Attorney General of the United States. (When the applicable box is checked, completion of the final signature block by the U.S. Marshal or his Deputy always certifies service on the U.S. Attorney and the Attorney General, regardless of whether other defendants on the writ were served.) Failure to provide any of the copies will delay service of the writ.

Complete all entries above the double line. Mark all applicable check boxes and use the "Special Instructions" to advise of any information that will assist the U.S. Marshal in expediting service.

If more than one writ and USM-285 is submitted on a single case, the U.S. Marshal will receipt for all of them on the first USM-285. You will receive for your records the last (No. 5) "Acknowledgment of Receipt" copy for all the USM-285 forms you submit. When the writ is served, you will receive the No. 3 Notice of Service copy. This copy will be identical to the return to the Clerk of the Court.

Upon completion of all services (if the Marshals fees were not requested or tendered in advance or if additional fees are indicated), you will receive a "Billing Statement" (copy 4 of USM-285) from the United States Marshal. (NOTE: Copy 4 should be returned, by you, to the U.S. Marshal, together with your payment of the amount owed.)

Additional supplies of the USM-285 may be obtained from the Clerk of the U.S. District Court or U.S. Marshal, without cost.

U.S. Department of Justice

United States Marshals Service

Case: 1:85-cv-01609 Doc #: 10 Filed: 11/15/85 Page: 3 of PROCESS RE

See Instructions for "So on the reverse of this for

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

PLAINTIFF							
		COURT CASE NUMBER					
NEXXUS PRODUCTS COMPANY, INC.		C1-85-1609					
DEFENDANT		TYPE OF PROCESS					
DRUG EMPORIUM, INC. AND DOES I THROUGH XXV		Seizure					
SERVE NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR I	DESCRIPT	TION OF PROPERTY TO	SEIZE OR CONDEMN				
ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)	CAT DIE						
7760 Olen Tangy River Road							
AT Worthington, Ohio							
SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:		of process to be rith this Form - 285					
Thomas L. Kautz, Esq.	N						
Wood, Herron & Evans		of parties to be n this case					
2700 Carew Tower Cincinnati OH 45202	GI 16	•	8				
CINCILITACE ON 43202	on U.S.	or service A.					
SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SE	ERVICE (I	nclude Business and Alte	ernate Addresses, All				
Telephone Numbers, and Estimated Times Available For Service):			Fold				
<u>Fold.</u>			Polid				
Seizure of all products and documents bearing,	refer	ring or rela	ting				
to the Plaintiff's trade name and trademarks in	cludi	ng "NEXXUS",					
"THERAPPE", "ASSURE", "HUMECTRESS", "NATURE AND	EART	H UNITED WIT	H				
SCIENCE", "KERAPHIX" and "BOTANOIL".							
Flower P. Kauts							
Signature of Attorney or other Originator requesting service on behalf of: XPLAINTIFF	TELEPH	ONE NUMBER	DATE				
Thomas L. Kautz	241-	2324					
SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO N	W TON	RITE BELOW TI	HIS LINE				
I acknowledge receipt for the total Total Process District District Signature of Author	rized USM	S Deputy or Clerk	Date				
number of process indicated. (Sign only first USM 285 if more of Origin to Serve		0					
than one USM 285 is submitted) No. No.		yw.	10-7-80				
Thereby certify and return that I have personally served, have legal evidence of service, have executed as hown in "Remarks", the process							
described on the individual company of the control	described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address						
described on the individual, company, corporation, etc., at the address shown above or on the individual inserted below.	icuar, com		Inserted below.				
described on the individual, company, corporation, etc., at the address shown above or on the indivi- inserted below.	THE PERSON NAMED IN						
described on the individual, company, corporation, etc., at the address shown above or on the indivi	THE PERSON NAMED IN	ove (See remarks below)					
described on the individual, company, corporation, etc., at the address shown above or on the individual inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., Name and title of individual served (if not shown above)	THE PERSON NAMED IN	A person o	f suitable age and dis-				
described on the individual, company, corporation, etc., at the address shown above or on the individual inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., Name and title of individual served (if not shown above)	THE PERSON NAMED IN	A person of cretion the					
described on the individual, company, corporation, etc., at the address shown above or on the individual inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., Name and title of individual served (if not shown above)	THE PERSON NAMED IN	A person of cretion the fendant's un	f suitable age and dis- n residing in the de- sual place of abode.				
described on the individual, company, corporation, etc., at the address shown above or on the individual served below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., Name and title of individual served (if not shown above) PHILIP WILBER, PRESIDENT	THE PERSON NAMED IN	A person of cretion the fendant's un Date of Service 10 - 9 - 8 5	f suitable age and dis- n residing in the de- sual place of abode.				
described on the individual, company, corporation, etc., at the address shown above or on the individual served below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., Name and title of individual served (if not shown above) PHILIP WILBER, PRESIDENT Address (complete only if different than shown above)	THE PERSON NAMED IN	A person of cretion the fendant's under the fe	f suitable age and dis- n residing in the de- sual place of abode.				
described on the individual, company, corporation, etc., at the address shown above or on the individual served below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., Name and title of individual served (if not shown above) PHILIP WILBER PRESIDENT Address (complete only if different than shown above)	, named at	A person o cretion the fendant's under the fen	f suitable age and dis- n residing in the de- sual place of abode.				
described on the individual, company, corporation, etc., at the address shown above or on the individual inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., Name and title of individual served (if not shown above) PHILIP WILBER PRESIDENT Address (complete only if different than shown above) Service Fee Total Mileage Charges Forwarding Fee (including endeavors) COO LOGO Advance Deposits	, named at	A person o cretion the fendant's under the fen	f suitable age and dis- n residing in the de- sual place of abode. Time / 0:15 am rshal or Deputy But I				
described on the individual, company, corporation, etc., at the address shown above or on the individual inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., Name and title of individual served (if not shown above) PHILIP WILBER PRESIDENT Address (complete only if different than shown above) Service Fee Total Mileage Charges (including endeavors) Total Charges Advance Deposits (including endeavors) REMARKS:	, named at	A person o cretion the fendant's under the fen	f suitable age and dis- n residing in the de- sual place of abode. Time / 0:15 am rshal or Deputy But I				
described on the individual, company, corporation, etc., at the address shown above or on the individual served below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., Name and title of individual served (if not shown above) PHILIP WILBER, PRESIDENT Address (complete only if different than shown above) Service Fee Total Mileage Charges (including endeavors) G. 0.00 106.96 REMARKS: TEMS SEIZEO Total Charges Advance Deposits TEMS SEIZEO Total Charges Total	, named ab	A person of cretion the fendant's under the fe	f suitable age and dis- n residing in the de- sual place of abode. Time / 0:15 am rshal or Deputy But I				
described on the individual, company, corporation, etc., at the address shown above or on the individual served below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., Name and title of individual served (if not shown above) PHILIP WILBER, PRESIDENT Address (complete only if different than shown above) Service Fee Total Mileage Charges (including endeavors) G. 0.00 106.96 REMARKS: TEMS SEIZEO Total Charges Advance Deposits TEMS SEIZEO Total Charges Total	, named ab	A person of cretion the fendant's under the fe	f suitable age and dis- n residing in the de- sual place of abode. Time / 0:15 am rshal or Deputy But I				
described on the individual, company, corporation, etc., at the address shown above or on the individual inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., Name and title of individual served (if not shown above) PHILIP WILBER PRESIDENT Address (complete only if different than shown above) Service Fee Total Mileage Charges (including endeavors) Total Charges Advance Deposits (including endeavors) Total Charges Advance Deposits (including endeavors) REMARKS:	, named ab	A person of cretion the fendant's under the fe	f suitable age and dis- n residing in the de- sual place of abode. Time / 0:15 am rshal or Deputy But I				
described on the individual, company, corporation, etc., at the address shown above or on the individual inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., Name and title of individual served (if not shown above) PHILIP WILBER, PRESIDENT Address (complete only if different than shown above) Service Fee Total Mileage Charges (including endeavors) Forwarding Fee (including endeavors) G. 00 106, 96 REMARKS: ITEMS SEIZED: THUSE PAGE INFORMATION OF AD	, named ab	A person of cretion the fendant's under the fe	f suitable age and dis- n residing in the de- sual place of abode. Time / 0:15 am rshal or Deputy But I				
described on the individual, company, corporation, etc., at the address shown above or on the individual inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., Name and title of individual served (if not shown above) PHILIP WILBER, PRESIDENT Address (complete only if different than shown above) Service Fee Total Mileage Charges (including endeavors) Total Charges (including endeavors) G. 00 106, 96 REMARKS: THARL PAGE INFORMATION OF AD NEXXUS PRODUCT	, named ab	A person of cretion the fendant's under the fe	f suitable age and dis- n residing in the de- sual place of abode. Time / 0:15 am rshal or Deputy But I				
described on the individual, company, corporation, etc., at the address shown above or on the individual inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., Name and title of individual served (if not shown above) PHILIP WILBER, PRESIDENT Address (complete only if different than shown above) Service Fee Total Mileage Charges (including endeavors) Forwarding Fee (including endeavors) G. 00 106, 96 REMARKS: ITEMS SEIZED: THUSE PAGE INFORMATION OF AD	, named ab	A person of cretion the fendant's under the fe	f suitable age and dis- n residing in the de- sual place of abode. Time / 0:15 am rshal or Deputy But I				

INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL

Please type or print legibly, insuring readability of all copies. DO NOT DETACH ANY COPIES.

Submit one complete set of this form (USM-285) and one copy of each writ for each individual, company, corporation, etc., to be served or property to be seized or condemned. The applicable fees for such service(s) (T28, USC Sec. 1921 establishes the fees for service of process by the U.S. Marshal) may be required prior to said service.

For service of any process upon an officer or agent of the United States Government, submit a copy of the writ and a set of Form USM-285 for each officer or agent upon whom service is desired. Submit three (3) additional copies of the writs for service upon the Government of the United States. The U.S. Marshal will serve one (1) upon the U.S. Attorney and will forward two (2) to the Attorney General of the United States. (When the applicable box is checked, completion of the final signature block by the U.S. Marshal or his Deputy always certifies service on the U.S. Attorney and the Attorney General, regardless of whether other defendants on the writ were served.) Failure to provide any of the copies will delay service of the writ.

Complete all entries above the double line. Mark all applicable check boxes and use the "Special Instructions" to advise of any information that will assist the U.S. Marshal in expediting service.

If more than one writ and USM-285 is submitted on a single case, the U.S. Marshal will receipt for all of them on the first USM-285. You will receive for your records the last (No. 5) "Acknowledgment of Receipt" copy for all the USM-285 forms you submit. When the writ is served, you will receive the No. 3 Notice of Service copy. This copy will be identical to the return to the Clerk of the Court.

Upon completion of all services (if the Marshals fees were not requested or tendered in advance or if additional fees are indicated), you will receive a "Billing Statement" (copy 4 of USM-285) from the United States Marshal. (NOTE: Copy 4 should be returned, by you, to the U.S. Marshal, together with your payment of the amount owed.)

Additional supplies of the USM-285 may be obtained from the Clerk of the U.S. District Court or U.S. Marshal, without cost.

Case: 1:85-cv-01609 Doc #: 10 Filed: 11/15/85 Page: 5 of 46 PAGEID #: 7

U.S. Department of Justice United States Marshals Service

PROCESS RE IPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

PLAINTIFF		COURT CASE NUMBER		
NEXXUS PRODUCTS COMPANY, INC.		C1-85-1609		
DEFENDANT		TYPE OF PROCESS		
DRUG EMPORIUM, INC. AND DOES I THROUGH XXV Seizure				
SERVE NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN				
DRUG EMPORIUM		. HOWOF TWOTERTITO	SEIZE ON COMPENII	
ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)	No.			
5160 East Main Street				
AT Columbus, Ohio				
SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW	V: Numb	er of process to be		
		with this Form - 285		
Thomas L. Kautz, Esq.				
Wood, Herron & Evans		er of parties to be		
2700 Carew Tower	L	in this case	8	
Cincinnati OH 45202		for service		
	on U.	5.A.		
SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPE	DITING SERVICE	(Include Rusiness and Alte	ornate Addresses All	
Telephone Numbers, and Estimated Times Available For Service):	DITING SERVICE	Therade Dusiness and Alle	emute Addresses, All	
<u>Fold</u>			Fold	
6 11 2 1 1 2 1 1 2 2 2 2 2 2 2 2 2 2 2 2				
Seizure of all products and documents bear	ing, rere	rring or rela	ting	
to the Plaintiff's trade name and trademar				
"THERAPPE", "ASSURE", "HUMECTRESS", "NATUR	E AND EAR	TH UNITED WIT	Н	
SCIENCE", "KERAPHIX" and "BOTANOIL".				
Homes L Kang				
Signature of Attorney or other Originator requesting service on behalf of: XPLAII	NTIFF TELEF	HONE NUMBER	DATE	
Thomas L. Kautz		-2324		
SPACE BELOW FOR USE OF U.S. MARSHAL ONLY	- DO NOT	WRITE BELOW TO	HIS LINE	
STITUTE BELLO II I ON COL OI CIDITIZITION				
Lacknowledge receipt for the total Total Process District District Signature	re of Authorized IIS	MS Deputy or Clerk		
number of process indicated. of Origin to Serve	re of Authorized US	MS Deputy or Clerk	Date	
number of process indicated. (Sign only first USM 285 if more of Origin to Serve	re of Authorized US	MS Deputy or Clerk	Date	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) of Origin to Serve No. No.		Ju	Date 10-7-8	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) Thereby certify and return that I have personally served, have legal evidence of the process indicated. I have personally served, have legal evidence of the process indicated.	f service,	executed as shown in "Re	Date 10-7-8 emarks", the process	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) of Origin to Serve No. No.	f service,	executed as shown in "Re	Date 10-7-8 emarks", the process	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) I hereby certify and return that I have personally served, have legal evidence of described on the individual, company, corporation, etc., at the address shown above or of inserted below.	f service,	executed as shown in "Re empany, corporation, etc., s	Date 10-7-8- emarks", the process shown at the address	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) I hereby certify and return that I have personally served, have legal evidence of described on the individual, company, corporation, etc., at the address shown above or of the company of the compan	f service,	executed as shown in "Re empany, corporation, etc., s	Date 10-7-8- emarks", the process shown at the address	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) I hereby certify and return that I have personally served, □ have legal evidence of described on the individual, company, corporation, etc., at the address shown above or of inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below.	f service,	executed as shown in "Re ompany, corporation, etc., s above (See remarks below)	Date 10-7-8- emarks", the process shown at the address	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) I hereby certify and return that I have personally served, have legal evidence of described on the individual, company, corporation, etc., at the address shown above or of inserted below.	f service,	executed as shown in "Reompany, corporation, etc., sabove (See remarks below) A person of cretion the	Date 10-7-8- emarks'', the process shown at the address of suitable age and disented residing in the de-	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) I hereby certify and return that I have personally served, □ have legal evidence of described on the individual, company, corporation, etc., at the address shown above or of inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Name and title of individual served (if not shown above) Dana Smith, Managel	f service,	above (See remarks below) A person of cretion the fendant's u	Date 10-7-8- emarks'', the process shown at the address of suitable age and disenter residing in the desual place of abode.	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) I hereby certify and return that I have personally served, □ have legal evidence of described on the individual, company, corporation, etc., at the address shown above or of inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below.	f service,	above (See remarks below) A person of cretion the fendant's u	Date 10-7-8- emarks'', the process shown at the address of suitable age and disented residing in the de-	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) I hereby certify and return that I have personally served, □ have legal evidence of described on the individual, company, corporation, etc., at the address shown above or of inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Name and title of individual served (if not shown above) Dana Smith, Managel	f service,	above (See remarks below) A person of cretion the fendant's under	Date 10-7-8- emarks'', the process shown at the address of suitable age and disent residing in the desual place of abode. Time am pm	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) I hereby certify and return that I have personally served, □ have legal evidence of described on the individual, company, corporation, etc., at the address shown above or of inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Name and title of individual served (if not shown above) Dana Smith, Managel	f service,	above (See remarks below) A person o cretion the fendant's u Date of Service T Signature of U.S. Ma	Date 10-7-8- emarks'', the process shown at the address of suitable age and distriction residing in the desual place of abode. Time am pm arshal or Deputy	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) I hereby certify and return that I have personally served, □ have legal evidence of described on the individual, company, corporation, etc., at the address shown above or of inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Name and title of individual served (if not shown above) Dana Smith Manager Address (complete only if different than shown above)	f service, have no the individual, co	above (See remarks below) A person of cretion the fendant's under the signature of U.S. Ma	Date 10-7-8- emarks'', the process shown at the address of suitable age and disent residing in the desual place of abode. Time am pm	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) I hereby certify and return that I have personally served, □ have legal evidence of described on the individual, company, corporation, etc., at the address shown above or of inserted below. □ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. □ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. □ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. □ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. □ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. □ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. □ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. □ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. □ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. □ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. □ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below.	f service, have no the individual, co	above (See remarks below) A person of cretion the fendant's under	Date 10-7-8- emarks", the process shown at the address of suitable age and distriction residing in the desual place of abode. Time am pm orshal or Deputy	
I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Name and title of individual served (if not shown above) Dana Smith Manage Charges Address (complete only if different than shown above) Service Fee Total Mileage Charges (including endeavors) Total Charges Advances (including endeavors)	f service, have on the individual, contraction, etc., named	above (See remarks below) A person of cretion the fendant's u Date of Service. T Signature of U.S. Marshal or towed to U.S. Marshal or	Date 10-7-8- emarks", the process shown at the address of suitable age and distriction residing in the desual place of abode. Time am pm orshal or Deputy	
I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Name and title of individual served (if not shown above) Dana Smith Manage Charges Address (complete only if different than shown above) Service Fee Total Mileage Charges (including endeavors) Total Charges Advances (including endeavors)	f service, have on the individual, contraction, etc., named	above (See remarks below) A person of cretion the fendant's u Date of Service. T Signature of U.S. Marshal or towed to U.S. Marshal or	Date 10-7-8- emarks", the process shown at the address of suitable age and distriction residing in the desual place of abode. Time am pm orshal or Deputy	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) I hereby certify and return that I have personally served, have legal evidence of described on the individual, company, corporation, etc., at the address shown above or of inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Name and title of individual served (if not shown above) Name and title of individual served (if not shown above) Name and title of individual served (if not shown above) Service Fee Total Mileage Charges (including endeavors) REMARKS: Seized: 20 Bottles OF SOOML Note than the individual company, corporation, etc., at the address shown above or of inserted below. Advanced to Service Fee (including endeavors) Total Mileage Charges (including endeavors) REMARKS: Seized: 20 Bottles OF SOOML Note (including endeavors)	f service, have on the individual, con the individual control	above (See remarks below) A person of cretion the fendant's u Date of Service. To Signature of U.S. Marshal or towed to U.S. Marshal or towed towed to U.S. Marshal or towed towed to U.S. Marshal or towed tow	Date 10-7-8- emarks", the process shown at the address of suitable age and distriction residing in the desual place of abode. Time am pm orshal or Deputy	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) I hereby certify and return that I have personally served, have legal evidence of described on the individual, company, corporation, etc., at the address shown above or of inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Name and title of individual served (if not shown above) Name and title of individual served (if not shown above) Name and title of individual served (if not shown above) Service Fee Total Mileage Charges (including endeavors) REMARKS: Seized: 20 Bottles OF SOOML Not Minable + Dush Fee I - Bottle OF 250 ML Not Minable + Dush Fee I	f service, have on the individual, con the individual control	above (See remarks below) A person of cretion the fendant's u Date of Service. To Signature of U.S. Marshal or towed to U.S. Marshal or towed towed to U.S. Marshal or towed towed to U.S. Marshal or towed tow	Date 10-7-8- emarks", the process shown at the address of suitable age and distriction residing in the desual place of abode. Time am pm orshal or Deputy	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) I hereby certify and return that I have personally served, have legal evidence of described on the individual, company, corporation, etc., at the address shown above or of inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Name and title of individual served (if not shown above) Name and title of individual served (if not shown above) Name and title of individual served (if not shown above) Service Fee Total Mileage Charges (including endeavors) REMARKS: Seized: 20-Bottles of 500 ML No.	f service, have on the individual, con the individual con the individual con the individual control to t	above (See remarks below) A person of cretion the fendant's under	Date 10-7-8- emarks", the process shown at the address of suitable age and distriction residing in the desual place of abode. Time am pm orshal or Deputy	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) I hereby certify and return that I have personally served, have legal evidence of described on the individual, company, corporation, etc., at the address shown above or of inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Name and title of individual served (if not shown above) Name and title of individual served (if not shown above) Name and title of individual served (if not shown above) Service Fee Total Mileage Charges (including endeavors) REMARKS: Seized: 20 Bottles OF SOOML Not Minable + Dush Fee I - Bottle OF 250 ML Not Minable + Dush Fee I	f service, have on the individual, con the individual con the individual con the individual con the individual control to the individual	above (See remarks below) A person of cretion the fendant's under	Date 10-7-8- emarks", the process shown at the address of suitable age and distriction residing in the desual place of abode. Time am pm orshal or Deputy	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) Thereby certify and return that I have personally served. have legal evidence of described on the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above of inserte	ration, etc., named ce Deposits Amount ce US HAIR ce us HAIR ce us HAIR ce us HAIR	above (See remarks below) A person of cretion the fendant's under	Date 10-7-8- emarks", the process shown at the address of suitable age and distriction residing in the desual place of abode. Time am pm orshal or Deputy	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) I hereby certify and return that I have personally served, have legal evidence of described on the individual, company, corporation, etc., at the address shown above or of inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. No. No. No. No. No. No. Prove legal evidence of described providence of address shown above or of inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. No. No. No. No. No. No. No.	ration, etc., named ce Deposits Amount ce Lus Hair	above (See remarks below) A person of cretion the fendant's under	Date 10-7-8- emarks", the process shown at the address of suitable age and distriction residing in the desual place of abode. Time am pm orshal or Deputy	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) Thereby certify and return that I have personally served, have legal evidence of described on the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I have personally served, have legal evidence or of the address shown above or of inserted below. Thereby certify and return that I have personally served, have legal evidence or of the address shown above or of inserted below. Thereby certify and return that I have personally served, have legal evidence or of the address shown above or of inserted below. Thereby certify and return that I have personally served, have legal evidence or of the address shown above or of inserted below. Thereby certify and return that I have personally served, have legal evidence or of the address shown above o	ration, etc., named ce Deposits Amount ce US HAIR ce us HAIR ce us HAIR	above (See remarks below) A person of cretion the fendant's under	Date 10-7-8- emarks", the process shown at the address of suitable age and distriction residing in the desual place of abode. Time am pm orshal or Deputy	
number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) Thereby certify and return that I have personally served, have legal evidence of described on the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I am unable to locate the individual, company, corporation, etc., at the address shown above or of inserted below. Thereby certify and return that I have personally served, have legal evidence of described below. Thereby certify and return that I have personally served, have legal evidence or of inserted below. Thereby certify and return that I have personally served, have legal evidence or of inserted below. Thereby certify and return that I have personally served, have legal evidence or of inserted below. Thereby certify and return that I have personally served, have legal evidence or of inserted below. The address shown above or of inserted below. Thereby certify and return that I have personally served, have legal evidence or of inserted below. The address shown above or of inserted belo	ration, etc., named ce Deposits Amount ce Lus Hair	above (See remarks below) A person of cretion the fendant's under	Date 10-7-8- emarks", the process shown at the address of suitable age and distriction residing in the desual place of abode. Time am pm orshal or Deputy	

INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL

Please type or print legibly, insuring readability of all copies. DO NOT DETACH ANY COPIES.

Submit one complete set of this form (USM-285) and one copy of each writ for each individual, company, corporation, etc., to be served or property to be seized or condemned. The applicable fees for such service(s) (T28, USC Sec. 1921 establishes the fees for service of process by the U.S. Marshal) may be required prior to said service.

For service of any process upon an officer or agent of the United States Government, submit a copy of the writ and a set of Form USM-285 for each officer or agent upon whom service is desired. Submit three (3) additional copies of the writs for service upon the Government of the United States. The U.S. Marshal will serve one (1) upon the U.S. Attorney and will forward two (2) to the Attorney General of the United States. (When the applicable box is checked, completion of the final signature block by the U.S. Marshal or his Deputy always certifies service on the U.S. Attorney and the Attorney General, regardless of whether other defendants on the writ were served.) Failure to provide any of the copies will delay service of the writ.

Complete all entries above the double line. Mark all applicable check boxes and use the "Special Instructions" to advise of any information that will assist the U.S. Marshal in expediting service.

If more than one writ and USM-285 is submitted on a single case, the U.S. Marshal will receipt for all of them on the first USM-285. You will receive for your records the last (No. 5) "Acknowledgment of Receipt" copy for all the USM-285 forms you submit. When the writ is served, you will receive the No. 3 Notice of Service copy. This copy will be identical to the return to the Clerk of the Court.

Upon completion of all services (if the Marshals fees were not requested or tendered in advance or if additional fees are indicated), you will receive a "Billing Statement" (copy 4 of USM-285) from the United States Marshal. (NOTE: Copy 4 should be returned, by you, to the U.S. Marshal, together with your payment of the amount owed.)

Additional supplies of the USM-285 may be obtained from the Clerk of the U.S. District Court or U.S. Marshal, without cost.

Case: 1:85-cv-01609 Doc #: 10 Filed: 11/15/85 Page: 7 of 46 PAGEID #: 9

U.S. Department of Justice United States Marshals Service

PROCESS RECIPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form

OF THE PERSON	se of this form.
PLAINTIFF NEXXUS PRODUCTS COMPANY, INC.	COURT CASE NUMBER C1-85-1609
DRUG EMPORIUM, INC. AND DOES I THROUGH XXV	TYPE OF PROCESS Seizure
SERVE NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR I	DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 221 Graceland Boulevard	
Columbus, Ohio SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:	
	Number of process to be served with this Form - 285
Thomas L. Kautz, Esq. Wood, Herron & Evans	Number of parties to be served in this case 8
2700 Carew Tower Cincinnati OH 45202	Check for service on U.S.A.
SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SE Telephone Numbers, and Estimated Times Available For Service):	ERVICE (Include Business and Alternate Addresses, All
Fold	Fold
Seizure of all products and documents bearing, to the Plaintiff's trade name and trademarks in "THERAPPE", "ASSURE", "HUMECTRESS", "NATURE AND SCIENCE", "KERAPHIX" and "BOTANOIL". Howar L Kauf	cluding "NEXXUS", EARTH UNITED WITH
Signature of Attorney or other Originator requesting service on behalf of: XPLAINTIFF	TELEPHONE NUMBER DATE 241-2324
SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO	
	rized USMS Deputy or Clerk Date 10-7-8
I hereby certify and return that I have personally served, have legal evidence of service, described on the individual, company, corporation, etc., at the address shown above or on the indivinserted below.	have executed as shown in "Remarks", the process idual, company, corporation, etc., shown at the address
I hereby certify and return that I am unable to locate the individual, company, corporation, etc.	, named above (See remarks below)
Name and title of individual served (if not shown above) DETSY JONES, MANAGER	A person of suitable age and discretion then residing in the defendant's usual place of abode.
Address (complete only if different than shown above)	Date of Service Time am pm Signature of U.S. Marshal or Deputy
Service Fee Total Mileage Charges Forwarding Fee Total Charges Advance Deposits 3,00	Amount owed to U.S. Marshal or Amount of Refund
REMARKS: Items Seiced;	
14-Bottles OF SOOME NETUS #	AIR SHAMPOO
1 - Invoice # 17070 Netus HAIR	PRODUCTS

* MILEAGE & DUSH FEE ON DRUG EMPORIUM, 7760 OLEN TANGY RIVER RD. RETURN

Case: 1:85-cv-01609 Doc #: 10 Filed: 11/15/85 Page: 8 of 46 PAGEID #: 10

INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL

Please type or print legibly, insuring readability of all copies. DO NOT DETACH ANY COPIES.

Submit one complete set of this form (USM-285) and one copy of each writ for each individual, company, corporation, etc., to be served or property to be seized or condemned. The applicable fees for such service(s) (T28, USC Sec. 1921 establishes the fees for service of process by the U.S. Marshal) may be required prior to said service.

For service of any process upon an officer or agent of the United States Government, submit a copy of the writ and a set of Form USM-285 for each officer or agent upon whom service is desired. Submit three (3) additional copies of the writs for service upon the Government of the United States. The U.S. Marshal will serve one (1) upon the U.S. Attorney and will forward two (2) to the Attorney General of the United States. (When the applicable box is checked, completion of the final signature block by the U.S. Marshal or his Deputy always certifies service on the U.S. Attorney and the Attorney General, regardless of whether other defendants on the writ were served.) Failure to provide any of the copies will delay service of the writ.

Complete all entries above the double line. Mark all applicable check boxes and use the "Special Instructions" to advise of any information that will assist the U.S. Marshal in expediting service.

If more than one writ and USM-285 is submitted on a single case, the U.S. Marshal will receipt for all of them on the first USM-285. You will receive for your records the last (No. 5) "Acknowledgment of Receipt" copy for all the USM-285 forms you submit. When the writ is served, you will receive the No. 3 Notice of Service copy. This copy will be identical to the return to the Clerk of the Court.

Upon completion of all services (if the Marshals fees were not requested or tendered in advance or if additional fees are indicated), you will receive a "Billing Statement" (copy 4 of USM-285) from the United States Marshal. (NOTE: Copy 4 should be returned, by you, to the U.S. Marshal, together with your payment of the amount owed.)

Additional supplies of the USM-285 may be obtained from the Clerk of the U.S. District Court or U.S. Marshal, without cost.

Case: 1:85-cv-01609 Doc #: 10 Filed: 11/15/85 Page: 9 of 46 PAGEID #: 11

U.S. Department of Justice United States Marshals Service

PROCESS RE IPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal"

PLAINTIFF	COURT CASE NUMBER
NEXXUS PRODUCTS COMPANY, INC.	C1-85-1609
DEFENDANT	TYPE OF PROCESS
DRUG EMPORIUM, INC. AND DOES I THROUGH XXV	Seizure
SERVE NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DES	CRIPTION OF PROPERTY TO SEIZE OR CONDEMN
ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)	
AT 240 North Wilson Road Columbus, Ohio	
SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:	imber of process to be
Set	rved with this Form - 285
Thomas L. Kautz, Esq.	
	Imber of parties to be
Cincinnati OH 45202	8
	u.S.A
SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVIT Telephone Numbers, and Estimated Times Available For Service): Fold	CE (Include Business and Alternate Addresses, All Fold
Seizure of all products and documents bearing, reto the Plaintiff's trade name and trademarks inclute "THERAPPE", "ASSURE", "HUMECTRESS", "NATURE AND ESCIENCE", "KERAPHIX" and "BOTANOIL".	uding "NEXxUS",
Signature of Attorney or other Originator requesting service on behalf of: X PLAINTIFF TE	LEPHONE NUMBER DATE
Thomas L. Kautz	41-2324
SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NO	T WRITE BELOW THIS LINE
Tacknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) Total Process District of Origin No. No.	USMS Deputy or Clerk Date 10-7-85
Thereby certify and return that I have personally served, have legal evidence of service, described on the individual, company, corporation, etc., at the address shown above or on the individual inserted below.	I, company, corporation, etc., shown at the address
I hereby certify and return that I am unable to locate the individual, company, corporation, etc., nar	ned above (See remarks below)
Name and title of individual served (if not shown above)	A person of suitable age and dis- cretion then residing in the de-
VIM WHITE, MANAGER	fendant's usual place of abode.
Address (complete only if different than shown above)	Date of Service Time 12:30 pm
SAME	Signature of U.S. Marshal or Deputy
Service Fee Total Mileage Charges (including endeavors) Forwarding Fee Total Charges Advance Deposits Ar	mount owed to U.S. Marshall or Amount of Refund
REMARKS: BELOW ITEMS SEIZED:	
IGHTY-FINE BOTTLES OF NEXXUS HAIR PRIDICTS - 13	15 ML.
FOUR BOTTLES OF NEXXUS HAVE PRODUCTS -25	
WENTY-FOUR BOTTLES OF NEXXUS HAIR PROPUCTS - 50	
ONE INVOICE # 15987 CONCERNING NEXXUS	

Case: 1:85-cv-01609 Doc #: 10 Filed: 11/15/85 Page: 10 of 46 PAGEID #: 12

INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL

Please type or print legibly, insuring readability of all copies. DO NOT DETACH ANY COPIES.

Submit one complete set of this form (USM-285) and one copy of each writ for each individual, company, corporation, etc., to be served or property to be seized or condemned. The applicable fees for such service(s) (T28, USC Sec. 1921 establishes the fees for service of process by the U.S. Marshal) may be required prior to said service.

For service of any process upon an officer or agent of the United States Government, submit a copy of the writ and a set of Form USM-285 for each officer or agent upon whom service is desired. Submit three (3) additional copies of the writs for service upon the Government of the United States. The U.S. Marshal will serve one (1) upon the U.S. Attorney and will forward two (2) to the Attorney General of the United States. (When the applicable box is checked, completion of the final signature block by the U.S. Marshal or his Deputy always certifies service on the U.S. Attorney and the Attorney General, regardless of whether other defendants on the writ were served.) Failure to provide any of the copies will delay service of the writ.

Complete all entries above the double line. Mark all applicable check boxes and use the "Special Instructions" to advise of any information that will assist the U.S. Marshal in expediting service.

If more than one writ and USM-285 is submitted on a single case, the U.S. Marshal will receipt for all of them on the first USM-285. You will receive for your records the last (No. 5) "Acknowledgment of Receipt" copy for all the USM-285 forms you submit. When the writ is served, you will receive the No. 3 Notice of Service copy. This copy will be identical to the return to the Clerk of the Court.

Upon completion of all services (if the Marshals fees were not requested or tendered in advance or if additional fees are indicated), you will receive a "Billing Statement" (copy 4 of USM-285) from the United States Marshal. (NOTE: Copy 4 should be returned, by you, to the U.S. Marshal, together with your payment of the amount owed.)

Additional supplies of the USM-285 may be obtained from the Clerk of the U.S. District Court or U.S. Marshal, without cost.

Case: 1:85-cv-01609 Doc #: 10 Filed: 11/15/85 Page: 11 of 46 PAGEID #: 13 U.S. Department of Justice PROCESS RE LIPT AND RETURN See Instructions for "Service of Process by the U.S. Marshal" United States Marshals Service on the reverse of this form. PLAINTIFF COURT CASE NUMBER NEXXUS PRODUCTS COMPANY, INC. C1-85-1609 DEFENDANT TYPE OF PROCESS DRUG EMPORIUM, INC. AND DOES I THROUGH XXV Seizure NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN SERVE DRUG EMPORIUM ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 5685 Emporium Drive Columbus, Ohio SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW: Number of process to be served with this Form - 285 Thomas L. Kautz, Esq. Number of parties to be Wood, Herron & Evans served in this case 8 2700 Carew Tower Cincinnati OH 45202 Check for service on U.S.A. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service): Fold Seizure of all products and documents bearing, referring or relating to the Plaintiff's trade name and trademarks including "NEXXUS", "THERAPPE", "ASSURE", "HUMECTRESS", "NATURE AND EARTH UNITED WITH SCIENCE", "KERAPHIX" and "BOTANOIL". Signature of Attorney or other Originator requesting service on behalf of: X PLAINTIFF TELEPHONE NUMBER DATE 241-2324 DEFENDANT Total Process District Signature of Authorized USMS Deputy or Clerk District Date of Origin to Serve A person of suitable age and dis-

Thomas L. Kautz SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE I acknowledge receipt for the total number of process indicated.
(Sign only first USM 285 if more than one USM 285 is submitted) I hereby certify and return that I A have personally served, 🗆 have legal evidence of service, 🕒 have executed & shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below. I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below) Name and title of individual served (if not shown above) cretion then residing in the defendant's usual place of abode. MicHAelson, MANAGER Date of Service Time am Address (complete only if different than shown above) Signature of U.S. Marshal or Deputy Amount owed to U.S. Marshal or Total Charges Advance Deposits Service Fee Total Mileage Charges Forwarding Fee

Scized: 2 - 500 ML BOTTLES OF NEWS HAIR SHAMPOO 1 - INVOICE # 15938 - Nexus HAIR PRODUCTS 1- INVOICE # 17109- NOWLS HAVE PRODUCTS 1- INVOICE # 17074 - Nexus HAIR PRODUCTS

* MILEME 2DUSH FEE ON DRUG EMPORIUM, 7760 OLEN TANGY RIVER RD. RETURN

3,00 REMARKS: (including endeavors)

AT

Case: 1:85-cv-01609 Doc #: 10 Filed: 11/15/85 Page: 12 of 46 PAGEID #: 14

INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL

Please type or print legibly, insuring readability of all copies. DO NOT DETACH ANY COPIES.

Submit one complete set of this form (USM-285) and one copy of each writ for each individual, company, corporation, etc., to be served or property to be seized or condemned. The applicable fees for such service(s) (T28, USC Sec. 1921 establishes the fees for service of process by the U.S. Marshal) may be required prior to said service.

For service of any process upon an officer or agent of the United States Government, submit a copy of the writ and a set of Form USM-285 for each officer or agent upon whom service is desired. Submit three (3) additional copies of the writs for service upon the Government of the United States. The U.S. Marshal will serve one (1) upon the U.S. Attorney and will forward two (2) to the Attorney General of the United States. (When the applicable box is checked, completion of the final signature block by the U.S. Marshal or his Deputy always certifies service on the U.S. Attorney and the Attorney General, regardless of whether other defendants on the writ were served.) Failure to provide any of the copies will delay service of the writ.

Complete all entries above the double line. Mark all applicable check boxes and use the "Special Instructions" to advise of any information that will assist the U.S. Marshal in expediting service.

If more than one writ and USM-285 is submitted on a single case, the U.S. Marshal will receipt for all of them on the first USM-285. You will receive for your records the last (No. 5) "Acknowledgment of Receipt" copy for all the USM-285 forms you submit. When the writ is served, you will receive the No. 3 Notice of Service copy. This copy will be identical to the return to the Clerk of the Court.

Upon completion of all services (if the Marshals fees were not requested or tendered in advance or if additional fees are indicated), you will receive a "Billing Statement" (copy 4 of USM-285) from the United States Marshal. (NOTE: Copy 4 should be returned, by you, to the U.S. Marshal, together with your payment of the amount owed.)

Additional supplies of the USM-285 may be obtained from the Clerk of the U.S. District Court or U.S. Marshal, without cost.

Case: 1:85-cv-01609 Doc #: 10 Filed: 11/15/85 Page: 13 of 46 PAGEID #: 15

U.S. Department of Justice United States Marshals Service

PROCESS RE IPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

DI ADIZIER	
PLAINTIFF	COURT CASE NUMBER
NEXXUS PRODUCTS COMPANY, INC.	C1-85-1609
DRUG EMPORIUM, INC. AND DOES I THROUGH XXV	TYPE OF PROCESS Seizure
SERVE NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR D. DRUG EMPORTUM	ESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 8251 Beechmon't Avenue	
AT Cincinnati, Ohio	
SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS RELOW.	
	Number of process to be served with this Form - 285
Thomas L. Kautz, Esq.	served with this Form - 200
Wood, Herron & Evans	Number of parties to be
2700 Carew Tower	served in this case 8
Cincinnati OH 45202	Check for service
SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SEE Telephone Numbers, and Estimated Times Available For Service):	RVICE (Include Business and Alternate Addresses, All
Fold	Fold
Seizure of all products and documents bearing, r	elerring or relating
to the Plaintiff's trade name and trademarks inc	riuding "NEXXUS",
"THERAPPE", "ASSURE", "HUMECTRESS", "NATURE AND	EARTH UNITED WITH
SCIENCE", "KERAPHIX" and "BOTANOIL".	
From L. Kant	
	TELEPHONE NUMBER DATE
C DECEMBANT	241-2324
SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO N	THE RESIDENCE OF THE PERSON NAMED IN COLUMN 2 IS NOT THE OWNER, WHEN PERSON NAMED IN COLUMN 2 IS NOT THE OWNER.
	The state of the s
I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 is submitted) Total Process District of Origin to Serve No.	Date Date Date Do-7-8 J
I hereby certify and return that I have personally served, have legal evidence of service, described on the individual, company, corporation, etc., at the address shown above or on the individual inserted below.	have executed as shown in "Remarks", the process ual, company, corporation, etc., shown at the address
I hereby certify and return that I am unable to locate the individual, company, corporation, etc., r	named above (See remarks below)
Name and title of individual served (if not shown above)	A person of suitable age and dis-
JIM SCHNEIDER, MANAGER	cretion then residing in the de- fendant's usual place of abode.
Address (complete only if different than shown above)	Date of Service Time 11:15 am
SAME AS ABOUR	Signature of U.S. Marshal or Deputy
	well Brand
Service Fee Total Mileage Charges Forwarding Fee Total Charges Advance Deposits 3,00	Amount owed to U.S. Marshal or Amount of Refund
REMARKS:	
NO NEXXUS HAIR PRODUCTS FO	UND
MILEAGE & DUSH CHARGES ON 485 E.	VENDER DD 1 - DAVID
11121100 - Dearl Mileons On 783 C.	KENER RU., CINTI. KEICKN

Case: 1:85-cv-01609 Doc #: 10 Filed: 11/15/85 Page: 14 of 46 PAGEID #: 16

INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL

Please type or print legibly, insuring readability of all copies. DO NOT DETACH ANY COPIES.

Submit one complete set of this form (USM-285) and one copy of each writ for each individual, company, corporation, etc., to be served or property to be seized or condemned. The applicable fees for such service(s) (T28, USC Sec. 1921 establishes the fees for service of process by the U.S. Marshal) may be required prior to said service.

For service of any process upon an officer or agent of the United States Government, submit a copy of the writ and a set of Form USM-285 for each officer or agent upon whom service is desired. Submit three (3) additional copies of the writs for service upon the Government of the United States. The U.S. Marshal will serve one (1) upon the U.S. Attorney and will forward two (2) to the Attorney General of the United States. (When the applicable box is checked, completion of the final signature block by the U.S. Marshal or his Deputy always certifies service on the U.S. Attorney and the Attorney General, regardless of whether other defendants on the writ were served.) Failure to provide any of the copies will delay service of the writ.

Complete all entries above the double line. Mark all applicable check boxes and use the "Special Instructions" to advise of any information that will assist the U.S. Marshal in expediting service.

If more than one writ and USM-285 is submitted on a single case, the U.S. Marshal will receipt for all of them on the first USM-285. You will receive for your records the last (No. 5) "Acknowledgment of Receipt" copy for all the USM-285 forms you submit. When the writ is served, you will receive the No. 3 Notice of Service copy. This copy will be identical to the return to the Clerk of the Court.

Upon completion of all services (if the Marshals fees were not requested or tendered in advance or if additional fees are indicated), you will receive a "Billing Statement" (copy 4 of USM-285) from the United States Marshal. (NOTE: Copy 4 should be returned, by you, to the U.S. Marshal, together with your payment of the amount owed.)

Additional supplies of the USM-285 may be obtained from the Clerk of the U.S. District Court or U.S. Marshal, without cost.

Case: 1:85-cv-01609 Doc #: 10 Filed: 11/15/85 Page: 15 of 46 PAGEID #: 17

U.S. Department of Justice United States Marshals Service

PROCESS RE IPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

1000									Chicago Santana
PLAINTIFF							COURT CASE NUMBE	R	
NEXXUS	PRODUCTS CO	MPANY,	INC.			C1-85-1609			
DEFENDANT							TYPE OF PROCESS		
DRUG EMPORIUM, INC. AND DOES I THROUGH XXV					Seizure				
SERVE	NAME OF INDIVI DRUG EMPO	DUAL, COMI	PANY, CO	RPORATION, ET	C., TO SERVE OR	DESCRIE	PTION OF PROPERTY	ro sei	ZE OR CONDEMN
1	ADDRESS (Street		tment No.	. City. State and 2	IP Code)	COST			
	7792 Olen								
AT	Worthingt								
SEND NOTICE	OF SERVICE COPY TO	REQUESTER	RATNAM	E AND ADDRESS	BELOW:	Numbe	r of process to be		
	=						with this Form - 285		
Thomas L. Kautz, Esq.									
	Wood, Her		The same of the sa				er of parties to be		
	2700 Care					served	in this case		8
1	Cincinnat	i OH	45202				for service		
						on U.S	.A.		
SPECIAL IN	STRUCTIONS OR OTHE	R INFORMAT	TION THA	T WILL ASSIST	IN EXPEDITING S	ERVICE	(Include Business and A	Ilterna	te Addresses, All
Telephone N	umbers, and Estimated T								Fold
Fold									Pold
-		J			boaring	rofo	rring or re	ati	na
Seizur	e of all pro	aucts a	and d	ocuments	bearing,	rere	ing "NEVVIIC	.acı	ing
to the	Plaintiff's	trade	name	and trac	lemarks II	ICTUU	THE NEXTOS	· mri	
"THERA	PPE", "ASSUR	E", "HU	UMECT.	RESS", "I	NATURE AND	EAR	TH ONITED W.	. 111	
	E", "KERAPHI		"BOT	ANOIL".					
The	mer L Ka	ut							
	ttorney or other Originate	or requesting	service on	behalf of:	XPLAINTIFF	TELEP	HONE NUMBER	D/	ATE
T	L. Kautz				□ DEFENDANT	241	-2324		
SPA	CE BELOW FOR	USE OF	U.S. N	ARSHAL (DNLY - DO	NOT V	VRITE BELOW	THIS	SLINE
Distance - Management -		STATE OF TAXABLE PARTY.	District	District	CARROLD STREET, STREET	STREET, SQUARE, SQUARE,	MS Deputy or Clerk		Date
number of pro	cess indicated.		of Origin	to Serve	Signature of Autho	nized ob	O .		Date
	t USM 285 if more 285 is submitted)	N	No.	No.	(he)			10785	
							1	D	
described on t	y and return that I he individual, company,								
inserted belov	٧.								
[I hereby	certify and return that I a	m unable to lo	ocate the in	ndividual, compar	ny, corporation, etc.	, named	above (See remarks belo	w)	
Name and title	of individual served (if n	ot shown abov	ve)				cretion	hen re	itable age and dis- esiding in the de-
						-	fendant' Date of Service	Time	place of abode.
Address (comp	olete only if different than	shown above	,				Date of Service	Time	pm
							Signature of U.S.	Marsha	al or Deputy
Service Fee	Total Mileage Charges (including endeavors)	Forwarding	Fee 7	Fotal Charges	Advance Deposits	Amount	owed to U.S. Marshal or	Amou	int of Refund
DEMANUE					1				
REMARKS:	ETURN	1 JUEN	8000	ED: 1	10 LONA	10	AT THAT	A	200655
10	Eloun	- THE		2) , ,			111-11	10	1 1
							19th	11	Siart
							AT THAT	2/5	17
							10-	0	Q
							100	0	3

Case: 1:85-cv-01609 Doc #: 10 Filed: 11/15/85 Page: 16 of 46 PAGEID #: 18

INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL

Please type or print legibly, insuring readability of all copies. DO NOT DETACH ANY COPIES.

Submit one complete set of this form (USM-285) and one copy of each writ for each individual, company, corporation, etc., to be served or property to be seized or condemned. The applicable fees for such service(s) (T28, USC Sec. 1921 establishes the fees for service of process by the U.S. Marshal) may be required prior to said service.

For service of any process upon an officer or agent of the United States Government, submit a copy of the writ and a set of Form USM-285 for each officer or agent upon whom service is desired. Submit three (3) additional copies of the writs for service upon the Government of the United States. The U.S. Marshal will serve one (1) upon the U.S. Attorney and will forward two (2) to the Attorney General of the United States. (When the applicable box is checked, completion of the final signature block by the U.S. Marshal or his Deputy always certifies service on the U.S. Attorney and the Attorney General, regardless of whether other defendants on the writ were served.) Failure to provide any of the copies will delay service of the writ.

Complete all entries above the double line. Mark all applicable check boxes and use the "Special Instructions" to advise of any information that will assist the U.S. Marshal in expediting service.

If more than one writ and USM-285 is submitted on a single case, the U.S. Marshal will receipt for all of them on the first USM-285. You will receive for your records the last (No. 5) "Acknowledgment of Receipt" copy for all the USM-285 forms you submit. When the writ is served, you will receive the No. 3 Notice of Service copy. This copy will be identical to the return to the Clerk of the Court.

Upon completion of all services (if the Marshals fees were not requested or tendered in advance or if additional fees are indicated), you will receive a "Billing Statement" (copy 4 of USM-285) from the United States Marshal. (NOTE: Copy 4 should be returned, by you, to the U.S. Marshal, together with your payment of the amount owed.)

Additional supplies of the USM-285 may be obtained from the Clerk of the U.S. District Court or U.S. Marshal, without cost.

FILED KENNETH J. MURPHY CLERK

OCT 4 9 04 AM '85

IN THE UNITED STATES DISTRICT COURT US. DISTRICT COURT
SOUTHERN DISTRICT OF DREED SOUTHERN DISTRICT OF DREED WEST DIV. CINCINNATI

NEXXUS PRODUCTS COMPANY, INC.,

Plaintiff,

Civil Action

Motion # _____ losue _____ Card _____ II/S _____

DRUG EMPORIUM, INC. AND DOES I THROUGH XXV,

v.

No. C1-85-1609

Conditional Control (Control (

Defendants,

Judge Weber Cincinnati

Hawkins, Bikoff & Newton JAMES L. BIKOFF, ESQ. 220 Montgomery Street Penthouse One San Francisco, CA 94104 (415) 397-5631

Wood, Herron & Evans BRUCE TITTEL, ESQ. THOMAS L. KAUTZ, ESQ. 2700 Carew Tower Cincinnati, Ohio 45202 (513) 241-2324

Attorneys for Plaintiff
NEXXUS Products Company, Inc.



TEMPORARY RESTRAINING AND SEIZURE ORDER;
ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION;
ORDER FOR SPECIAL APPOINTMENT TO EXECUTE SEIZURE;
ORDER FOR LEAVE TO TAKE ACCELERATED DISCOVERY

Based upon the pleadings, moving papers and affidavits submitted herein, the Court finds that:

- 1. The security determined adequate by the Court for the payment of such damages as any person may be entitled to recover as a result of a wrongful seizure or wrongful attempted seizure is the amount of \$40,000.
- 2. An order other than an <u>ex parte</u> seizure order is not adequate to achieve the purposes of 15 U.S.C. 1114.
- 3. The plaintiff has not publicized the requested seizure.
- 4. The plaintiff is likely to succeed in showing that the person against whom seizure is ordered used a counterfeit mark in connection with the sale, offering for sale or distribution of goods.
- 5. An immediate and irreparable injury will occur if an ex parte seizure without notice is not ordered.
- 6. The matter to be seized will be located at the places identified in the application.
- 7. The harm to the plaintiff of denying the application outweighs the harm to the legitimate interests of the persons against whom seizure would be ordered of granting the application.
- 8. The person against whom seizure would be ordered, or person acting in concert with such persons, would destroy,

move, hide or otherwise make such matter inaccessible to the Court if the plaintiff was to proceed on notice to such persons.

- 9. Plaintiff manufactures and sells hair and skin care products under the product names "THERAPPE", "ASSURE" and "HUMECTRESS" (the "NEXXUS Products") under its "NEXXUS" trade name and trademark and registered trademark "NATURE & EARTH UNITED WITH SCIENCE", which is registered on the Principal Register of the United States Patent and Trademark Office as Registration No. 1,196,046.
- 10. The plaintiff has shown good cause for holding a hearing on the motion for preliminary injunction on October 17 and 18, 1985.
- 11. Plaintiff has complied with 15 U.S.C. §1116(d)(2) by notifying the United States Attorney for the Southern District of Ohio of plaintiff's intent to seek an <u>ex parte</u> seizure order against the defendants.
- 12. Defendants bought, offered for sale and sold hair and skin care products falsely bearing the "NEXXUS" trade name and trademarks referred to in the Complaint, and threaten to continue such acts unless immediately restrained by order of this Court; and
- 13. It appearing that, based upon past actions of other counterfeiters in the same position as defendants, that the hair or skin care products in question and/or documents relating to the source of such hair or skin care products will be removed

or destroyed as soon as a given defendant learns that a lawsuit is being filed, and notification is given to third-party suppliers, manufacturers and customers; and

- 14. It further appearing that the only effective method of preventing infringing "NEXXUS" hair or skin care products from being removed or destroyed and of preserving other possible relevant evidence is to issue an order allowing the seizure of such evidence without notice to the defendants herein; and
- said acts of the Defendants will cause immediate and irreparable injury, loss and damage to plaintiff, its trade name, trademarks and the valuable goodwill and reputation associated therewith and that such injury, loss and damage is more likely to be sustained by plaintiff if the defendants are given notice of this litigation prior to the issuance of the Temporary Restraining Order and Order of Seizure hereinafter specified and thereby given time to dispose of or move the hair or skin care products bearing or using the aforesaid trademarks, it is hereby

ORDERED, that defendants or their attorneys show cause before the Honorable Herman J. Weber, a Judge of this Court, in Courtroom 836 of the United States Courthouse, U.S. Post Office Building, Cincinnati, Ohio, on October 17 1985, at 10:00 a.m. (the "OSC hearing"), or as soon thereafter as counsel can be heard, why an order should not be entered pursuant to Rules 30,

- 34, 64 and 65(a) of the Federal Rules of Civil Procedure granting plaintiff the following preliminary injunction relief:
- (a) enjoining and restraining defendants and defendants' agents, servants, employees, successors and assigns, and all those acting in concert or participation with them from:
 - (i) using in any manner the "NEXXUS" trade name and trademark, the NEXXUS product names "THERAPPE", "THERAPY", "ASSURE", "HUMECTRESS", "KERAPHIX", and "BOTANOIL", and the trademark "NATURE & EARTH UNITED WITH SCIENCE" (all of which are hereinafter referred to collectively as "the NEXXUS Marks"), or each of them, alone or in combination with any other word or words, which so resemble any of the NEXXUS Marks so as to be likely to cause confusion, deception or mistake on or in connection with the advertising, offering for sale or sale of any hair or skin care product not manufactured, distributed or sold by plaintiff or not authorized by plaintiff to be sold in connection with any of the NEXXUS Marks;
 - (ii) passing off, inducing or enabling others to sell or pass off any product as a product produced by plaintiff, which is not plaintiff's or not produced under the control and supervision of plaintiff and approved by plaintiff for sale under any of the NEXXUS Marks as used on hair or skin care products;

- (iii) committing any acts calculated to cause purchasers to falsely believe that defendants' products are those sold under the control and supervision of plaintiff, or sponsored by, approved or connected with, or guaranteed by, or produced under the control and supervision of plaintiff;
- (iv) further diluting and infringing the rights of plaintiff in and to the NEXxUS Marks and damaging plaintiff's goodwill and business reputation;
- (v) otherwise competing unfairly with plaintiff in any manner;
- (vi) shipping, delivering, distributing, returning or otherwise disposing of in any manner, hair or skin care products or inventory thereof not manufactured by or for plaintiff, nor authorized by plaintiff to be sold or offered for sale, which bear any of the NEXXUS Marks;
- (vii) manufacturing or using any tools, dies, stamping, mixing, embossing, silk screening, molding equipment, or any other apparatus or any and all formulations, designed especially for the manufacture or labeling of counterfeit products bearing any of the NEXXUS Marks and containers bearing any of the NEXXUS Marks and/or the advertising or display material relating thereto bearing any of the NEXXUS Marks; and

(viii) continuing to perform in any manner whatsoever any infringing acts; and

FURTHER ORDERED, that pending the hearing of plaintiff's application for a preliminary injunction, defendants and
their agents, servants, employees, successors and assigns, and
all those acting in concert or participation with them, be and
they hereby are TEMPORARILY RESTRAINED FROM (a) committing any of
the acts set forth in Subparagraphs (a) (i) through (viii) of the
preceding decretal paragraphs; and it is

FURTHER ORDERED, that the United States Marshal, his deputy and persons acting under such person's supervision, if readily available, assisted by one or more attorneys or agents of plaintiff, is directed to use reasonable force to search for, photograph, seize and impound forthwith:

- (a) any and all guarantees, warranties, circulars, price lists, labels, signs, prints, packages, wrappers, pouches, receptacles, advertising matter, promotional and other material in their possession or control bearing any of the NEXXUS Marks, or each of them, alone or in combination with any other words, or used in connection with the advertising, offering for sale or sale of products not plaintiff's or not made under the authorization and control of plaintiff;
- (b) all simulations, reproductions, counterfeits, copies or colorable imitations of the NEXXUS Marks,

including any and all merchandise bearing reproductions of the NEXxUS Marks in defendants' possession, custody or control, including those on or about defendants' premises;

(c) all plates, molds, matrices and other means of making said simulations, reproductions, counterfeits, copies or colorable imitations of the NEXXUS Marks; and (d) all records relating in any manner to the manufacture, sale or receipt of any merchandise bearing a counterfeit of the NEXXUS Marks in defendants' possession, custody or control, including those located on or about the defendants' premises (see attached list of locations), and shall deliver up same to care and custody of this Court.

materials shall be held in the custody of the U.S. Marshal at the U.S. Post Office Building, or in the custody of the U.S. Marshal at a warehouse selected by the U.S. Marshal, pending further order of this Court. The United States Marshal shall make, keep and maintain an inventory of all property seized pursuant to this Order. FURTHER ORDERED that plaintiff's counsel or its agents

may photocopy and review any books and records seized pursuant to this Order, that they may not disclose any trade secrets or other confidential information contained in such books and records to plaintiff or any other person pending the hearing of plaintiff's motion to conform the seizure authorized herein. FURTHER ORDERED that pending the hearing of plaintiff's motion to confirm the seizure authorized herein, the Clerk of this Court is to keep and maintain under seal all papers filed herein, and that public scrutiny of such papers shall not be permitted, subject to defendants' right to access such papers upon presenting the Clerk of this Court with proper identification after the seizure authorized herein has been carried out; and it is further

ORDERED that defendants show cause at the hearing on plaintiff's motion to confirm the seizure authorized herein, why an order should not be entered, pursuant to Rules 30 and 34 of the Federal Rules of Civil Procedure, granting plaintiff expedited discovery of defendants with respect to the manufacture, receipt and sale of hair and skin care products bearing the NEXXUS trade name or trademark including discovery of the source thereof, the creation of such trademarks, the quantity of goods bearing such trademarks ordered, in inventory and sold by defendants, and other matters relevant to this action; and it is further

ORDERED, that plaintiff shall use reasonable precautions to protect the defendants from publicity, by or at the behest of the plaintiff, about this order and any seizure under this order until the OSC hearing.

FURTHER ORDERED, that counsel for plaintiff and their agents shall be permitted immediately to inspect and copy the records documenting the manufacture, sale or receipt of

merchandise bearing any simulation, reproduction, counterfeit, copy or colorable imitation of the NEXxUS Marks and accompany the United States Marshal, his deputy and person acting under such person's supervision, during searching, seizing and impounding provided for herein provided counsel for plaintiff and their agents maintain all trade secrets or other confidential information confidential and shall not disclose information held therein to plaintiff or any third parties except with leave of this Court or to the extent necessary to bring action against other parties identified by such records.

FURTHER ORDERED, that this Temporary Restraining and Seizure Order be and is hereby conditioned upon plaintiff's posting of security in the amount of \$40,000 by 2:00 p.m., October 3, 1985, for the payment of such costs and damages as may be incurred or suffered by any party who was found to be wrongfully restrained or whose goods were wrongfully seized, subject to the U.S. Marshal's right to require plaintiff to increase the amount of the bond if and when the goods seized from defendant have a total wholesale value in excess of the posted security of \$40,000, and it is

FURTHER ORDERED, that sufficient cause appearing herein, personal service of a copy of this Order to Show Cause and the papers upon which it is based being delivered to the defendants by the United States Marshal, or other law officer, or

their agents or designees, at the time of any seizures, as provided herein, shall be sufficient or at any time prior to October 11, 1985; and it is

FURTHER ORDERED, that the defendants shall have to and including October 15, 1985 at 4:00 p.m., within which to file and serve any briefs, affidavits or other evidence in opposition to the motion for preliminary injunction.

Herman J. Webe

United States District Judge

Dated: Cincinna

October $\frac{3}{2}$. 1985

ISSUED: 3.45 P.M. o'clock

DRUG EMPORIUM 485 East Kemper Road Cincinnati, Ohio

8251 Beechmont Avenue Cincinnati, Ohio

221 Graceland Boulevard Columbus, Ohio

5160 East Main Street Columbus, Ohio

5685 Emporium Drive Columbus, Ohio

240 North Wilson Road Columbus, Ohio

7792 Olen Tangy River Road Worthington, Ohio

7760 Olen Tangy River Road Worthington, Ohio

Case: 1:85-cv-01609 Doc #: 10 Filed: 11/15/85 Page: 29 of 46 PAGEID #: 31

Fidelity and Deposit Company

HOME OFFICE

OF MARYLAND

BALTIMORE, MD. 21203

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

NEXXUS PRODUCTS COMPANY, INC.,	
Plaintiff vs.	NoCl-85-1609
DRUG EMPORIUM, INC. and DOES I	UndertakingforTemporary.
through XXV, inclusive,	Restraining Order and Seizure Order
Defendants.	
WHEREAS, the above named Plaintiff	
	straining Order and Seizure Order
as provided by Rule 65 of the Federal Rule	s of Civil Procedure.
Ab - ab Defendants	, does hereby obligate itself, jointly and severally, to
	y Thousand and no/100
	Dollars (\$. 40,000,00).
It is further agreed by the Surety that in case Surety, the court may, upon notice to them, of not les against them, or either of them, in accordance with t	of default or contumacy on the part of the Principal or is than ten days, proceed summarily and render judgment their obligation and award execution thereon.
affixed by its duly authorized officer.	y has caused its corporate name and seal to be hereunto
Signed, sealed and dated this	day of Cotolin 1915
	ITY AND DEPOSIT COMPANY OF MARYLAND
The premium charged for this bond is \$800.00 Dollars per annum	By Michael Attorney-in-Fact
The undersigned declares under penalty of perjuthat an unrevoked power of attorney is on file in the	office of the Clerk of the above Court of attached hereto.
	Attorney-in-fact

FILED KENNETH J. MURPHY CLERK

OCT 4 9 04 AM '85

IN	THE UNITED	STATES D	ISTRIC	T COURT U	S. 51314.	et court
	SOUTHERN	DISTRICT	OF O	taco so	DIHERH	CIST. OHI
	WEST	ERN DIVIS	ION No	E. WE	ST DIV. C	INCINNAT

Jairnal Motion # Issue

NEXXUS PRODUCTS COMPANY, INC.,

Plaintiff,

Civil Action

::/S___.

DRUG EMPORIUM, INC. AND DOES I THROUGH XXV,

v.

No. C1-85-1609

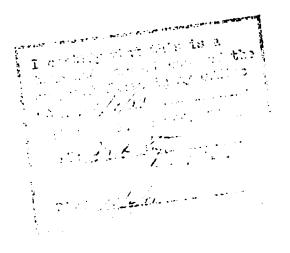
Defendants,

Judge Weber Cincinnati

Hawkins, Bikoff & Newton JAMES L. BIKOFF, ESQ. 220 Montgomery Street Penthouse One San Francisco, CA 94104 (415) 397-5631

Wood, Herron & Evans BRUCE TITTEL, ESQ. THOMAS L. KAUTZ, ESQ. 2700 Carew Tower Cincinnati, Ohio 45202 (513) 241-2324

Attorneys for Plaintiff
NEXxUS Products Company, Inc.



TEMPORARY RESTRAINING AND SEIZURE ORDER;
ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION;
ORDER FOR SPECIAL APPOINTMENT TO EXECUTE SEIZURE;
ORDER FOR LEAVE TO TAKE ACCELERATED DISCOVERY

Based upon the pleadings, moving papers and affidavits submitted herein, the Court finds that:

- 1. The security determined adequate by the Court for the payment of such damages as any person may be entitled to recover as a result of a wrongful seizure or wrongful attempted seizure is the amount of \$40,000.
- 2. An order other than an <u>ex parte</u> seizure order is not adequate to achieve the purposes of 15 U.S.C. 1114.
- 3. The plaintiff has not publicized the requested seizure.
- 4. The plaintiff is likely to succeed in showing that the person against whom seizure is ordered used a counterfeit mark in connection with the sale, offering for sale or distribution of goods.
- 5. An immediate and irreparable injury will occur if an ex parte seizure without notice is not ordered.
- 6. The matter to be seized will be located at the places identified in the application.
- 7. The harm to the plaintiff of denying the application outweighs the harm to the legitimate interests of the persons against whom seizure would be ordered of granting the application.
- 8. The person against whom seizure would be ordered, or person acting in concert with such persons, would destroy,

move, hide or otherwise make such matter inaccessible to the Court if the plaintiff was to proceed on notice to such persons.

- 9. Plaintiff manufactures and sells hair and skin care products under the product names "THERAPPE", "ASSURE" and "HUMECTRESS" (the "NEXXUS Products") under its "NEXXUS" trade name and trademark and registered trademark "NATURE & EARTH UNITED WITH SCIENCE", which is registered on the Principal Register of the United States Patent and Trademark Office as Registration No. 1,196,046.
- 10. The plaintiff has shown good cause for holding a hearing on the motion for preliminary injunction on October 17 and 18, 1985.
- 11. Plaintiff has complied with 15 U.S.C. §1116(d)(2) by notifying the United States Attorney for the Southern District of Ohio of plaintiff's intent to seek an <u>ex parte</u> seizure order against the defendants.
- 12. Defendants bought, offered for sale and sold hair and skin care products falsely bearing the "NEXXUS" trade name and trademarks referred to in the Complaint, and threaten to continue such acts unless immediately restrained by order of this Court; and
- 13. It appearing that, based upon past actions of other counterfeiters in the same position as defendants, that the hair or skin care products in question and/or documents relating to the source of such hair or skin care products will be removed

or destroyed as soon as a given defendant learns that a lawsuit is being filed, and notification is given to third-party suppliers, manufacturers and customers; and

- method of preventing infringing "NEXXUS" hair or skin care products from being removed or destroyed and of preserving other possible relevant evidence is to issue an order allowing the seizure of such evidence without notice to the defendants herein; and
- said acts of the Defendants will cause immediate and irreparable injury, loss and damage to plaintiff, its trade name, trademarks and the valuable goodwill and reputation associated therewith and that such injury, loss and damage is more likely to be sustained by plaintiff if the defendants are given notice of this litigation prior to the issuance of the Temporary Restraining Order and Order of Seizure hereinafter specified and thereby given time to dispose of or move the hair or skin care products bearing or using the aforesaid trademarks, it is hereby

ORDERED, that defendants or their attorneys show cause before the Honorable Herman J. Weber, a Judge of this Court, in Courtroom 836 of the United States Courthouse, U.S. Post Office Building, Cincinnati, Ohio, on October 17 1985, at 10:00 a.m. (the "OSC hearing"), or as soon thereafter as counsel can be heard, why an order should not be entered pursuant to Rules 30,

- 34, 64 and 65(a) of the Federal Rules of Civil Procedure granting plaintiff the following preliminary injunction relief:
- (a) enjoining and restraining defendants and defendants' agents, servants, employees, successors and assigns, and all those acting in concert or participation with them from:
 - (i) using in any manner the "NEXXUS" trade name and trademark, the NEXXUS product names "THERAPPE", "THERAPY", "ASSURE", "HUMECTRESS", "KERAPHIX", and "BOTANOIL", and the trademark "NATURE & EARTH UNITED WITH SCIENCE" (all of which are hereinafter referred to collectively as "the NEXXUS Marks"), or each of them, alone or in combination with any other word or words, which so resemble any of the NEXXUS Marks so as to be likely to cause confusion, deception or mistake on or in connection with the advertising, offering for sale or sale of any hair or skin care product not manufactured, distributed or sold by plaintiff or not authorized by plaintiff to be sold in connection with any of the NEXXUS Marks;
 - (ii) passing off, inducing or enabling others to sell or pass off any product as a product produced by plaintiff, which is not plaintiff's or not produced under the control and supervision of plaintiff and approved by plaintiff for sale under any of the NEXXUS Marks as used on hair or skin care products;

- (iii) committing any acts calculated to cause purchasers to falsely believe that defendants' products are those sold under the control and supervision of plaintiff, or sponsored by, approved or connected with, or guaranteed by, or produced under the control and supervision of plaintiff;
- (iv) further diluting and infringing the rights of plaintiff in and to the NEXxUS Marks and damaging plaintiff's goodwill and business reputation;
- (v) otherwise competing unfairly with plaintiff in any manner;
- (vi) shipping, delivering, distributing, returning or otherwise disposing of in any manner, hair or skin care products or inventory thereof not manufactured by or for plaintiff, nor authorized by plaintiff to be sold or offered for sale, which bear any of the NEXXUS Marks;
- (vii) manufacturing or using any tools, dies, stamping, mixing, embossing, silk screening, molding equipment, or any other apparatus or any and all formulations, designed especially for the manufacture or labeling of counterfeit products bearing any of the NEXXUS Marks and containers bearing any of the NEXXUS Marks and/or the advertising or display material relating thereto bearing any of the NEXXUS Marks; and

(viii) continuing to perform in any manner whatsoever any infringing acts; and

FURTHER ORDERED, that pending the hearing of plaintiff's application for a preliminary injunction, defendants and their agents, servants, employees, successors and assigns, and all those acting in concert or participation with them, be and they hereby are TEMPORARILY RESTRAINED FROM (a) committing any of the acts set forth in Subparagraphs (a) (i) through (viii) of the preceding decretal paragraphs; and it is

FURTHER ORDERED, that the United States Marshal, his deputy and persons acting under such person's supervision, if readily available, assisted by one or more attorneys or agents of plaintiff, is directed to use reasonable force to search for, photograph, seize and impound forthwith:

- (a) any and all guarantees, warranties, circulars, price lists, labels, signs, prints, packages, wrappers, pouches, receptacles, advertising matter, promotional and other material in their possession or control bearing any of the NEXxUS Marks, or each of them, alone or in combination with any other words, or used in connection with the advertising, offering for sale or sale of products not plaintiff's or not made under the authorization and control of plaintiff;
- (b) all simulations, reproductions, counterfeits, copies or colorable imitations of the NEXXUS Marks,

including any and all merchandise bearing reproductions of the NEXxUS Marks in defendants' possession, custody or control, including those on or about defendants' premises;

(c) all plates, molds, matrices and other means of making said simulations, reproductions, counterfeits, copies or colorable imitations of the NEXXUS Marks; and (d) all records relating in any manner to the manufacture, sale or receipt of any merchandise bearing a counterfeit of the NEXXUS Marks in defendants' possession, custody or control, including those located on or about the defendants' premises (see attached list of locations), and shall deliver up same to care and custody of this Court.

materials shall be held in the custody of the U.S. Marshal at the U.S. Post Office Building, or in the custody of the U.S. Marshal at a warehouse selected by the U.S. Marshal, pending further order of this Court. The United States Marshal shall make, keep and maintain an inventory of all property seized pursuant to this Order.

FURTHER ORDERED that plaintiff's counsel or its agents

may photocopy and review any books and records seized pursuant to this Order, that they may not disclose any trade secrets or other confidential information contained in such books and records to plaintiff or any other person pending the hearing of plaintiff's motion to conform the seizure authorized herein.

FURTHER ORDERED that pending the hearing of plaintiff's motion to confirm the seizure authorized herein, the Clerk of this Court is to keep and maintain under seal all papers filed herein, and that public scrutiny of such papers shall not be permitted, subject to defendants' right to access such papers upon presenting the Clerk of this Court with proper identification after the seizure authorized herein has been carried out; and it is further

ORDERED that defendants show cause at the hearing on plaintiff's motion to confirm the seizure authorized herein, why an order should not be entered, pursuant to Rules 30 and 34 of the Federal Rules of Civil Procedure, granting plaintiff expedited discovery of defendants with respect to the manufacture, receipt and sale of hair and skin care products bearing the NEXXUS trade name or trademark including discovery of the source thereof, the creation of such trademarks, the quantity of goods bearing such trademarks ordered, in inventory and sold by defendants, and other matters relevant to this action; and it is further

ORDERED, that plaintiff shall use reasonable precautions to protect the defendants from publicity, by or at the behest of the plaintiff, about this order and any seizure under this order until the OSC hearing.

FURTHER ORDERED, that counsel for plaintiff and their agents shall be permitted immediately to inspect and copy the records documenting the manufacture, sale or receipt of

merchandise bearing any simulation, reproduction, counterfeit, copy or colorable imitation of the NEXXUS Marks and accompany the United States Marshal, his deputy and person acting under such person's supervision, during searching, seizing and impounding provided for herein provided counsel for plaintiff and their agents maintain all trade secrets or other confidential information confidential and shall not disclose information held therein to plaintiff or any third parties except with leave of this Court or to the extent necessary to bring action against other parties identified by such records.

FURTHER ORDERED, that this Temporary Restraining and Seizure Order be and is hereby conditioned upon plaintiff's posting of security in the amount of \$40,000 by 2:00 p.m., October 3, 1985, for the payment of such costs and damages as may be incurred or suffered by any party who was found to be wrongfully restrained or whose goods were wrongfully seized, subject to the U.S. Marshal's right to require plaintiff to increase the amount of the bond if and when the goods seized from defendant have a total wholesale value in excess of the posted security of \$40,000, and it is

FURTHER ORDERED, that sufficient cause appearing herein, personal service of a copy of this Order to Show Cause and the papers upon which it is based being delivered to the defendants by the United States Marshal, or other law officer, or

their agents or designees, at the time of any seizures, as provided herein, shall be sufficient or at any time prior to October 11, 1985; and it is

FURTHER ORDERED, that the defendants shall have to and including October 15, 1985 at 4:00 p.m., within which to file and serve any briefs, affidavits or other evidence in opposition to the motion for preliminary injunction.

Herman J. Weber

United States District Judge

Dated: Cincinnati, Ohio

October -3 , 1985

ISSUED: 3.45 P.M. o'clock

DRUG EMPORIUM 485 East Kemper Road Cincinnati, Ohio

8251 Beechmont Avenue Cincinnati, Ohio

221 Graceland Boulevard Columbus, Ohio

5160 East Main Street Columbus, Ohio

5685 Emporium Drive Columbus, Ohio

240 North Wilson Road Columbus, Ohio

7792 Olen Tangy River Road Worthington, Ohio

7760 Olen Tangy River Road Worthington, Ohio

Case: 1:85-cv-01609 Doc #: 10 Filed: 11/15/85 Page: 42 of 46 PAGEID #: 44

Fidelity and Deposit Company

HOME OFFICE

OF MARYLAND BALTIMORE, MD. 21203

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

NEXXUS PRODUCTS COMPANY, INC.,	
Plaintiff vs.	NoC1-85-1609
DRUG EMPORIUM, INC. and DOES I	UndertakingforTemporary.
through XXV, inclusive,	Restraining Order and Seizure Order
Defendants.	
WHEREAS, the above named Plainti	<u>ff</u>
desires to give an undertaking for. Temporary.	Restraining Order and Seizure Order
as provided by Rule 65 of the Federal Ru	les of Civil Procedure.
	ety, does hereby obligate itself, jointly and severally, to
	rty Thousand and no/100
	Dollars (\$.40,000,00).
It is further agreed by the Surety that in case	se of default or contumacy on the part of the Principal or less than ten days, proceed summarily and render judgment
affixed by its duly authorized officer.	ety has caused its corporate name and seal to be hereunto
Signed, sealed and dated this	L day of Cotoker 1915
Bond No. 9929448 FIDE	LITY AND DEPOSIT COMPANY OF MARYLAND
The premium charged for this bond is \$800.00 Dollars per annum	By Williach Allorney-in-Fact
The undersigned declares under penalty of perthat an unrevoked power of attorney is on file in the	rjury that he/she is an attorney in fact for said surety and se office of the Clerk of the above Court or attached hereto.
******	Attorney-in-fact
	- -

Case: 1:85-cv-0160	9 Doc #: 10 Filed: 1 RETURN C	1/15/85 Page: 43 OF SERVICE	of 46 PAGEIL) #: 45
	RIEOMAIL	DATE MAILE Octobe	EDON r 8, 1985	C-1-85-160
NAME OF SERVER	TITLE		/	
Bruce Tittel	Attorn	ey		
Check one box below to indicate appropriat	te metrioo or service			
☐ Served personally upon the defe	ndant. Place where serve	ed		
Left copies thereof at the defendiscretion then residing therein. Name of person with whom the	summons and complain	t were left:		
2XOther (specify) Served de 1035 Clubview Boulevard N and Form 18-A in duplicat class United States Mail. is attached hereto and ma	A copy of Ac	knowledgment	Receipt K	equested IIIst-
	STATEMENT	OF SERVICE FEES		
TRAVEL	SERVICES		TOTAL	
	DECLARA	TION OF SERVER		
Executed on 10 69/05	Wood, Herr 2700 Carew	Bruce Tixtel fon & Evans Tower OH 45202		
COPY OF SO WITH P. WILL ON Oct 8, 19	BER, PRES	DRDEN Judge Mag. Journal Motion #	4815 J	LCKY SOUTHER OF SOUTH
1) As to who may serve a summons see Rule 4	of the Federál Rules of Civi	Procedure.	7	

SUMMONS IN A CIVIL ACTION

CIV 1 (Rev. 10/82)	<u> </u>	
United States Bistrie	et Court	SOUTHERN DISTRICT OF OHIO
NEXXUS PRODUCTS COMPANY, INC.,		DOCKET NO. (C=1-85-16 09
		TO: (NAME AND ADDRESS OF DEFENDANT)
V. DRUG EMPORIUM And DOES I TH	Plaintiff, ROUGH XXV, Defendants.	Drug Emporium WEBER 1704 485 East Kemper Road Cincinnati, OH 45246

YOU ARE HEREBY SUMMONED and required to serve upon

PLAINTIFF'S ATTORNEY (NAME AND ADDRESS)

Thomas L. Kautz & Bruce Tittel Wood, Herron & Evans 2700 Carew Tower Cincinnati OH 45202 (513) 241-2324

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

		,
Kenneth J. Murphy, Clerk		10/4/85
BY) DEPUTY PLERK Jamil Jons, J.	e.	

ACKNOWLEDGMENT OF RECEIPT OF SUMMONS AND COMPLAINT

	r penalty of perjury, that I received s and of the complaint in the above-
captioned manner at:	Wothington Oliva
	Address
	Philip of Willy Prosent
	Stignature
	Relationship to Entity/Authority to receive Service of Process
	10/16/85

Case: 1:85-cv-01609 Doc #: 10 Filed: 11/15/85 Page: 46 of 46 PAGEID #: 48

SOUTHERN DISTRICT COURT WESTERN DIVISION

NEXXUS PRODUCTS COMPANY, INC.

Plaintiff

Civil Action No.Cl-85-1609

:

Notice and Acknowledgment

DRUG EMPORIUM, INC. AND DOES I

of Receipt of Summons

:

THROUGH XXV,

, . . .

and Complaint

Defendant s

Form 18-A

NOTICE

Drug Emporium, Inc.

Co: c/o Philip I. Wilber, 1035 Clubview Boulevard North, Worthington (insert the name and address of the person to be served)

OH 43085

The enclosed summons and complaint are served pursuant to Rule 4(c) (2)(C)(ii) of the Federal Rules of Civil Procedure.

You must complete the acknowledgment part of this form and return one copy of the completed form to the sender within 20 days.

You must sign and date the acknowledgment. If you are served on behalf of a corporation, unincorporated association (including a partner-ship), or other entity, you must indicate under your signature your relationship to that entity. If you are served on behalf of another person and you are authorized to receive process, you must indicate under your signature your authority.

If you do not complete and return the form to the sender within 20 days, you (or the party on whose behalf you are being served) may be required to pay any expenses incurred in serving a summons and complaint in any other manner permitted by law.

If you do complete and return this form, you (or the party on whose behalf you are being served) must answer the complaint within 20 days. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

I declare, under the penalty of perjury, that this Notice and Acknowledgment of Receipt of Summons and Complaint was mailed on October 8 ____, 19 85.

Bruce Ti

10/8

1985